

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Departmental

Typed by: Caitlin

Stored – 11/23/16

Proofread by _____

Checked by _____ ☒

By: **Leave Blank (By Request – Departmental – Maryland Insurance Administration)**

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance – Risk Management and Own Risk and Solvency Assessment Act**

3 FOR the purpose of requiring certain insurers to maintain a risk management framework;
 4 requiring certain insurers to conduct an own risk and solvency assessment regularly
 5 or at any time when there are significant changes to the insurer's risk profile;
 6 requiring certain insurers to provide the Maryland Insurance Commissioner with an
 7 own risk and solvency assessment report on request; establishing the manner in
 8 which certain insurers may comply with the reporting requirement; providing for
 9 certain insurers to be exempt from the own risk and solvency assessment reporting
 10 requirement under certain circumstances; providing that certain insurers that are
 11 not exempt from the own risk and solvency assessment reporting requirement may
 12 apply for a waiver under certain circumstances; describing certain factors that the
 13 Commissioner may consider when determining whether to grant a waiver;
 14 authorizing the Commissioner to require the own risk and solvency assessment
 15 reporting for an insurer that has a risk-based capital that is at a certain level, meets
 16 certain standards for an insurer deemed in a financially hazardous condition, or
 17 exhibits qualities of a troubled insurer; requiring an insurer that was exempt from
 18 the own risk and solvency assessment reporting requirement but no longer qualifies
 19 for an exemption to comply with the requirements of this Act within a certain period;
 20 requiring the own risk and solvency assessment report to be prepared consistent
 21 with a certain manual; requiring certain documentation for the own risk and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



solvency assessment report to be maintained by the insurer in accordance with certain financial examination requirements; authorizing the Commissioner to retain certain consultants for certain purposes; providing that certain documents and information are confidential and privileged; providing that certain confidential information may be shared with certain entities under certain circumstances; requiring that certain elements be included in a written agreement governing the sharing of certain information with certain entities; authorizing certain penalties for the violation of this Act; authorizing the Commissioner to adopt regulations to carry out this Act; providing for the purposes and application of this Act; defining certain terms; providing for a delayed effective date; and generally relating to insurer risk management and solvency.

BY adding to

Article – Insurance

Section 32–101 through 32–110 to be under the new title “Title 32. Risk Management and Own Risk and Solvency Assessment Act”

Annotated Code of Maryland

(2011 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Insurance

TITLE 32. RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT.

32–101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “INSURANCE GROUP” MEANS, FOR THE PURPOSE OF CONDUCTING AN ORSA, THOSE INSURERS AND AFFILIATES THAT ARE INCLUDED WITHIN AN INSURANCE HOLDING COMPANY SYSTEM AS DEFINED IN § 7–101 OF THIS ARTICLE.

(C) (1) “INSURER” HAS THE MEANING STATED IN § 1–101 OF THIS ARTICLE.

1 (2) “INSURER” DOES NOT INCLUDE AN AGENCY, AUTHORITY, OR
2 INSTRUMENTALITY OF THE UNITED STATES, A STATE, OR A POLITICAL SUBDIVISION
3 OF A STATE.

4 (D) “NAIC” MEANS THE NATIONAL ASSOCIATION OF INSURANCE
5 COMMISSIONERS.

6 (E) “OWN RISK AND SOLVENCY ASSESSMENT” OR “ORSA” MEANS A
7 CONFIDENTIAL INTERNAL ASSESSMENT, APPROPRIATE TO THE NATURE, SCALE,
8 AND COMPLEXITY OF AN INSURER OR INSURANCE GROUP, THAT THE INSURER OR
9 INSURANCE GROUP CONDUCTS, OF THE MATERIAL AND RELEVANT RISKS
10 ASSOCIATED WITH THE INSURER’S OR INSURANCE GROUP’S CURRENT BUSINESS
11 PLAN AND THE SUFFICIENCY OF CAPITAL RESOURCES TO SUPPORT THOSE RISKS.

12 (F) “ORSA GUIDANCE MANUAL” MEANS THE CURRENT VERSION OF THE
13 OWN RISK AND SOLVENCY ASSESSMENT GUIDANCE MANUAL DEVELOPED AND
14 ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

15 (G) “ORSA-RELATED INFORMATION” MEANS ANY DOCUMENT, MATERIAL,
16 OR OTHER INFORMATION RELATED TO AN ORSA, AN ORSA SUMMARY REPORT, OR
17 A RISK MANAGEMENT FRAMEWORK OF AN INSURER OR INSURANCE GROUP.

18 (H) “ORSA SUMMARY REPORT” MEANS A CONFIDENTIAL HIGH-LEVEL
19 SUMMARY OF THE ORSA OF AN INSURER OR INSURANCE GROUP.

20 (I) “SUPERVISORY COLLEGE” HAS THE MEANING STATED IN § 2-209.1 OF
21 THIS ARTICLE.

22 32-102.

23 (A) THE PURPOSES OF THIS TITLE ARE TO:

24 (1) REQUIRE AN INSURER OR INSURANCE GROUP TO MAINTAIN A RISK
25 MANAGEMENT FRAMEWORK AND COMPLETE AN ORSA;

26 (2) SET THE REQUIREMENTS FOR FILING AN ORSA SUMMARY
27 REPORT WITH THE COMMISSIONER; AND

1 (3) PROVIDE FOR THE CONFIDENTIAL TREATMENT OF THE ORSA,
2 THE ORSA SUMMARY REPORT, AND OTHER ORSA-RELATED INFORMATION.

3 (B) THIS TITLE APPLIES TO ALL INSURERS DOMICILED IN THE STATE THAT
4 ARE NOT EXEMPT UNDER § 32-106 OF THIS TITLE.

5 32-103.

6 (A) EACH INSURER SUBJECT TO THIS TITLE SHALL MAINTAIN A RISK
7 MANAGEMENT FRAMEWORK FOR IDENTIFYING, ASSESSING, MONITORING,
8 MANAGING, AND REPORTING ITS MATERIAL AND RELEVANT RISKS.

9 (B) AN INSURER MAY SATISFY THIS REQUIREMENT IF THE INSURANCE
10 GROUP OF WHICH THE INSURER IS A MEMBER MAINTAINS A RISK MANAGEMENT
11 FRAMEWORK THAT APPLIES TO THE OPERATIONS OF THE INSURER.

12 32-104.

13 (A) SUBJECT TO § 32-106 OF THIS TITLE, AN INSURER, OR THE INSURANCE
14 GROUP OF WHICH THE INSURER IS A MEMBER, SHALL REGULARLY CONDUCT AN
15 ORSA CONSISTENT WITH THE PROCESS OUTLINED IN THE ORSA GUIDANCE
16 MANUAL.

17 (B) THE ORSA SHALL BE CONDUCTED:

18 (1) REGULARLY, BUT NOT LESS THAN ONCE EACH YEAR; AND

19 (2) AT ANY TIME WHEN THERE IS A SIGNIFICANT CHANGE TO THE RISK
20 PROFILE OF THE INSURER OR THE INSURANCE GROUP OF WHICH THE INSURER IS A
21 MEMBER.

22 32-105.

23 (A) ON REQUEST OF THE COMMISSIONER, BUT NOT MORE THAN ONCE EACH
24 YEAR, AN INSURER SHALL SUBMIT TO THE COMMISSIONER AN ORSA SUMMARY
25 REPORT OR A COMBINATION OF REPORTS THAT TOGETHER CONTAIN THE
26 INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL, APPLICABLE TO THE
27 INSURER OR THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER.

1 **(B) NOTWITHSTANDING ANY REQUEST FROM THE COMMISSIONER, IF THE**
2 **INSURER IS A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE**
3 **REPORT REQUIRED BY THIS SECTION IF THE COMMISSIONER IS THE LEAD STATE**
4 **COMMISSIONER OF THE INSURANCE GROUP AS DETERMINED BY THE PROCEDURES**
5 **IN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NAIC.**

6 **(C) THE INSURER SHALL:**

7 **(1) DETERMINE THE MOST APPROPRIATE DATE OF THE FILING BASED**
8 **ON THE INSURER'S INTERNAL STRATEGIC PLANNING PROCESSES; AND**

9 **(2) NOTIFY THE COMMISSIONER OF THE ANTICIPATED DATE OF THE**
10 **FILING.**

11 **(D) THE INSURER'S OR INSURANCE GROUP'S CHIEF RISK OFFICER OR**
12 **OTHER EXECUTIVE WITH RESPONSIBILITY FOR THE OVERSIGHT OF THE INSURER'S**
13 **ENTERPRISE RISK MANAGEMENT PROCESS SHALL SIGN THE REPORT AND ATTEST**
14 **TO THE BEST OF THAT INDIVIDUAL'S BELIEF AND KNOWLEDGE THAT:**

15 **(1) THE INSURER APPLIES THE ENTERPRISE RISK MANAGEMENT**
16 **PROCESS DESCRIBED IN THE ORSA SUMMARY REPORT; AND**

17 **(2) A COPY OF THE REPORT HAS BEEN PROVIDED TO THE INSURER'S**
18 **BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE OF THE BOARD.**

19 **(E) AN INSURER MAY COMPLY WITH SUBSECTION (A) OF THIS SECTION BY**
20 **PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT THAT THE**
21 **INSURER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE INSURER**
22 **IS A MEMBER PROVIDED TO THE COMMISSIONER OF ANOTHER STATE OR TO A**
23 **SUPERVISOR OR REGULATOR OF A FOREIGN JURISDICTION IF THAT REPORT**
24 **PROVIDES INFORMATION THAT IS COMPARABLE TO THE INFORMATION DESCRIBED**
25 **IN THE ORSA GUIDANCE MANUAL.**

26 **(F) ANY REPORT THAT IS PROVIDED UNDER SUBSECTION (E) OF THIS**
27 **SECTION IN A LANGUAGE OTHER THAN ENGLISH MUST BE ACCOMPANIED BY A**
28 **TRANSLATION OF THAT REPORT INTO ENGLISH.**

1 32-106.

2 (A) AN INSURER IS EXEMPT FROM THE REQUIREMENTS OF THIS TITLE IF:

3 (1) THE INSURER HAS ANNUAL DIRECT WRITTEN AND UNAFFILIATED
4 ASSUMED PREMIUM LESS THAN \$500,000,000, INCLUDING INTERNATIONAL DIRECT
5 AND ASSUMED PREMIUM BUT EXCLUDING PREMIUMS REINSURED WITH THE
6 FEDERAL CROP INSURANCE CORPORATION AND FEDERAL FLOOD PROGRAM; AND

7 (2) THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER
8 HAS ANNUAL DIRECT WRITTEN AND UNAFFILIATED ASSUMED PREMIUM LESS THAN
9 \$1,000,000,000, INCLUDING INTERNATIONAL DIRECT AND ASSUMED PREMIUM BUT
10 EXCLUDING PREMIUMS REINSURED WITH THE FEDERAL CROP INSURANCE
11 CORPORATION AND FEDERAL FLOOD PROGRAM.

12 (B) (1) IF AN INSURER QUALIFIES FOR EXEMPTION UNDER SUBSECTION
13 (A)(1) OF THIS SECTION, BUT THE INSURANCE GROUP OF WHICH THE INSURER IS A
14 MEMBER DOES NOT QUALIFY FOR EXEMPTION UNDER SUBSECTION (A)(2) OF THIS
15 SECTION, THEN THE ORSA SUMMARY REPORT THAT IS REQUIRED UNDER § 32-105
16 OF THIS TITLE SHALL INCLUDE EVERY INSURER WITHIN THE INSURANCE GROUP.

17 (2) THE ORSA SUMMARY REPORT IN PARAGRAPH (1) OF THIS
18 SUBSECTION MAY BE SATISFIED BY SUBMITTING MORE THAN ONE ORSA SUMMARY
19 REPORT FOR ANY COMBINATION OF INSURERS IF THE COMBINATION OF REPORTS
20 INCLUDES EVERY INSURER WITHIN THE INSURANCE GROUP.

21 (C) IF AN INSURER DOES NOT QUALIFY FOR EXEMPTION UNDER
22 SUBSECTION (A)(1) OF THIS SECTION, BUT THE INSURANCE GROUP OF WHICH IT IS
23 A MEMBER QUALIFIES FOR EXEMPTION UNDER SUBSECTION (A)(2) OF THIS
24 SECTION, THEN THE ONLY ORSA SUMMARY REPORT REQUIRED UNDER § 32-105
25 OF THIS TITLE IS THE REPORT THAT APPLIES TO THAT INSURER.

26 (D) (1) AN INSURER THAT DOES NOT QUALIFY FOR EXEMPTION UNDER
27 SUBSECTION (A) OF THIS SECTION MAY APPLY TO THE COMMISSIONER FOR A
28 WAIVER FROM THE REQUIREMENTS OF THIS TITLE BASED ON UNIQUE
29 CIRCUMSTANCES.

1 (2) IF THE INSURER APPLYING FOR A WAIVER IS PART OF AN
2 INSURANCE GROUP WITH INSURERS DOMICILED IN MORE THAN ONE STATE, THE
3 COMMISSIONER MAY COORDINATE WITH THE LEAD STATE COMMISSIONER AND
4 WITH OTHER DOMICILIARY COMMISSIONERS IN CONSIDERING WHETHER TO GRANT
5 THE INSURER'S REQUEST FOR A WAIVER.

6 (3) IN DECIDING WHETHER TO GRANT THE INSURER'S REQUEST FOR
7 WAIVER, THE COMMISSIONER MAY CONSIDER:

8 (I) THE TYPE AND VOLUME OF BUSINESS WRITTEN;

9 (II) OWNERSHIP AND ORGANIZATIONAL STRUCTURE; AND

10 (III) ANY OTHER FACTOR THE COMMISSIONER CONSIDERS
11 RELEVANT TO THE INSURER OR INSURANCE GROUP OF WHICH THE INSURER IS A
12 MEMBER.

13 (E) NOTWITHSTANDING THE EXEMPTIONS PROVIDED FOR IN THIS SECTION,
14 THE COMMISSIONER MAY REQUIRE THAT AN INSURER:

15 (1) MAINTAIN A RISK MANAGEMENT FRAMEWORK, CONDUCT AN
16 ORSA, AND FILE AN ORSA SUMMARY REPORT BASED ON UNIQUE
17 CIRCUMSTANCES, INCLUDING THE TYPE AND VOLUME OF BUSINESS WRITTEN,
18 OWNERSHIP AND ORGANIZATIONAL STRUCTURE, FEDERAL AGENCY REQUESTS, AND
19 INTERNATIONAL SUPERVISOR REQUESTS; OR

20 (2) MAINTAIN A RISK MANAGEMENT FRAMEWORK, CONDUCT AN
21 ORSA, AND FILE AN ORSA SUMMARY REPORT IF THE INSURER:

22 (I) HAS RISK-BASED CAPITAL AT A COMPANY ACTION LEVEL
23 EVENT AS SET FORTH IN § 4-305 OF THIS ARTICLE;

24 (II) MEETS ONE OR MORE OF THE STANDARDS OF AN INSURER
25 DEEMED TO BE IN FINANCIALLY HAZARDOUS CONDITION AS DESCRIBED IN § 9-102
26 OF THIS ARTICLE; OR

27 (III) OTHERWISE EXHIBITS QUALITIES OF A TROUBLED INSURER
28 AS DETERMINED BY THE COMMISSIONER.

(F) IF AN INSURER THAT QUALIFIES FOR AN EXEMPTION UNDER SUBSECTION (A) OF THIS SECTION SUBSEQUENTLY NO LONGER QUALIFIES FOR THAT EXEMPTION DUE TO CHANGES IN PREMIUM AS REFLECTED IN THE INSURER'S MOST RECENT ANNUAL STATEMENT OR IN THE MOST RECENT ANNUAL STATEMENTS OF THE INSURERS WITHIN THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER, THE INSURER SHALL HAVE 1 YEAR FOLLOWING THE YEAR THE THRESHOLD IS EXCEEDED TO COMPLY WITH THIS TITLE.

32-107.

(A) THE ORSA SUMMARY REPORT SHALL BE PREPARED CONSISTENT WITH THE ORSA GUIDANCE MANUAL.

(B) DOCUMENTATION AND SUPPORTING INFORMATION FOR THE ORSA SUMMARY REPORT SHALL BE MAINTAINED AND MADE AVAILABLE ON EXAMINATION OR REQUEST OF THE COMMISSIONER.

(C) (1) THE COMMISSIONER SHALL REVIEW THE ORSA SUMMARY REPORT.

(2) THE COMMISSIONER SHALL MAKE ANY REQUESTS FOR ADDITIONAL INFORMATION USING PROCEDURES SIMILAR TO THOSE CURRENTLY USED IN THE ANALYSIS AND EXAMINATION OF MULTI-STATE OR GLOBAL INSURERS AND INSURANCE GROUPS.

(D) THE ORSA SUMMARY REPORT SHALL INCLUDE A SHORT SUMMARY OF MATERIAL CHANGES AND UPDATES TO THE ORSA SUMMARY REPORT SINCE THE PRIOR YEAR.

(E) THE COMMISSIONER MAY RETAIN, AT THE INSURER'S EXPENSE, THIRD-PARTY CONSULTANTS, INCLUDING ATTORNEYS, ACTUARIES, ACCOUNTANTS, AND OTHER EXPERTS NOT OTHERWISE A PART OF THE ADMINISTRATION'S STAFF AS MAY BE REASONABLY NECESSARY TO ASSIST THE ADMINISTRATION IN REVIEWING THE INSURER'S RISK MANAGEMENT FRAMEWORK, ORSA, ORSA SUMMARY REPORT, OR COMPLIANCE WITH THIS TITLE.

32-108.

1 (A) (1) DOCUMENTS, MATERIAL, OR OTHER INFORMATION, INCLUDING
2 THE ORSA SUMMARY REPORT, IN THE POSSESSION OR CONTROL OF THE
3 COMMISSIONER THAT ARE OBTAINED BY, CREATED BY, OR DISCLOSED TO THE
4 COMMISSIONER OR ANY OTHER PERSON UNDER THIS TITLE:

5 (I) ARE CONFIDENTIAL AND PRIVILEGED;

6 (II) ARE NOT SUBJECT TO TITLE 4 OF THE GENERAL
7 PROVISIONS ARTICLE;

8 (III) ARE NOT SUBJECT TO SUBPOENA; AND

9 (IV) ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE AS
10 EVIDENCE IN ANY CIVIL ACTION.

11 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (D) OF THIS
12 SECTION, THE COMMISSIONER MAY NOT OTHERWISE MAKE THE DOCUMENTS,
13 MATERIAL, OR OTHER INFORMATION PUBLIC WITHOUT PRIOR WRITTEN CONSENT
14 OF THE INSURER TO WHICH THEY PERTAIN.

15 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE
16 COMMISSIONER MAY USE THE DOCUMENTS, MATERIAL, OR OTHER INFORMATION IN
17 THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS PART OF
18 THE DUTIES OF THE COMMISSIONER.

19 (C) THE COMMISSIONER, AND ANY PERSON WHO RECEIVES DOCUMENTS,
20 MATERIAL, OR OTHER ORSA-RELATED INFORMATION, THROUGH EXAMINATION OR
21 OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE COMMISSIONER OR
22 WITH WHOM THE DOCUMENTS, MATERIAL, OR OTHER INFORMATION ARE SHARED
23 UNDER THIS TITLE, MAY NOT BE ALLOWED OR REQUIRED TO TESTIFY IN ANY
24 PRIVATE CIVIL ACTION CONCERNING ANY DOCUMENT, MATERIAL, OR INFORMATION
25 THAT IS SUBJECT TO SUBSECTION (A) OF THIS SECTION.

26 (D) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE COMMISSIONER'S
27 REGULATORY DUTIES, THE COMMISSIONER:

1 (1) MAY, ON REQUEST, SHARE DOCUMENTS, MATERIAL, OR OTHER
2 ORSA-RELATED INFORMATION, INCLUDING CONFIDENTIAL AND PRIVILEGED
3 DOCUMENTS, MATERIAL, OR INFORMATION THAT ARE SUBJECT TO SUBSECTION (A)
4 OF THIS SECTION, WITH:

5 (I) OTHER STATE, FEDERAL, AND INTERNATIONAL FINANCIAL
6 REGULATORY AGENCIES, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE;

7 (II) THE NAIC; AND

8 (III) ANY THIRD-PARTY CONSULTANTS THE COMMISSIONER
9 DESIGNATES.

10 (2) THE COMMISSIONER MAY SHARE DOCUMENTS, MATERIAL, OR
11 INFORMATION UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE RECIPIENT:

12 (I) AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY
13 AND PRIVILEGED STATUS OF THE DOCUMENTS, MATERIAL, OR INFORMATION; AND

14 (II) VERIFIES IN WRITING THAT IT HAS THE LEGAL AUTHORITY
15 TO MAINTAIN THE CONFIDENTIALITY OF THE DOCUMENTS, MATERIAL, OR
16 INFORMATION.

17 (E) (1) THE COMMISSIONER MAY RECEIVE DOCUMENTS, MATERIAL, OR
18 OTHER ORSA-RELATED INFORMATION FROM:

19 (I) OTHER STATE, FEDERAL, AND INTERNATIONAL FINANCIAL
20 REGULATORY AGENCIES, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE;
21 AND

22 (II) THE NAIC.

23 (2) THE COMMISSIONER SHALL MAINTAIN AS CONFIDENTIAL AND
24 PRIVILEGED ANY DOCUMENTS, MATERIAL, OR INFORMATION RECEIVED UNDER
25 PARAGRAPH (1) OF THIS SUBSECTION THAT THE COMMISSIONER RECEIVES WITH
26 NOTICE OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER
27 THE LAWS OF THE JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT,
28 MATERIAL, OR INFORMATION.

1 (F) THE COMMISSIONER SHALL ENTER INTO A WRITTEN AGREEMENT WITH
2 THE NAIC OR A THIRD-PARTY CONSULTANT GOVERNING THE SHARING AND USE OF
3 INFORMATION PROVIDED UNDER THIS TITLE, CONSISTENT WITH THIS SECTION,
4 THAT SHALL:

5 (1) SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE
6 CONFIDENTIALITY AND SECURITY OF INFORMATION SHARED WITH THE NAIC OR A
7 THIRD-PARTY CONSULTANT UNDER THIS TITLE, INCLUDING PROCEDURES AND
8 PROTOCOLS FOR SHARING BY THE NAIC WITH OTHER STATE REGULATORS FROM
9 STATES IN WHICH THE INSURANCE GROUP HAS DOMICILED INSURERS;

10 (2) SPECIFY THAT THE RECIPIENT AGREES IN WRITING TO MAINTAIN
11 THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE ORSA-RELATED
12 DOCUMENTS, MATERIAL, OR OTHER INFORMATION AND HAS VERIFIED IN WRITING
13 THE LEGAL AUTHORITY TO MAINTAIN THE CONFIDENTIALITY;

14 (3) SPECIFY THAT OWNERSHIP OF THE ORSA-RELATED
15 INFORMATION SHARED UNDER THIS TITLE REMAINS WITH THE COMMISSIONER AND
16 THAT THE USE OF THE INFORMATION BY THE NAIC OR A THIRD-PARTY
17 CONSULTANT IS SUBJECT TO THE DIRECTION OF THE COMMISSIONER;

18 (4) PROHIBIT THE NAIC OR A THIRD-PARTY CONSULTANT FROM
19 STORING THE INFORMATION SHARED UNDER THIS TITLE IN A PERMANENT
20 DATABASE AFTER THE UNDERLYING ANALYSIS IS COMPLETED;

21 (5) REQUIRE PROMPT NOTICE TO BE GIVEN TO AN INSURER WHOSE
22 CONFIDENTIAL INFORMATION IN THE POSSESSION OF THE NAIC OR A
23 THIRD-PARTY CONSULTANT UNDER THIS TITLE IS SUBJECT TO A REQUEST OR
24 SUBPOENA FOR DISCLOSURE OR PRODUCTION;

25 (6) REQUIRE THE NAIC OR A THIRD-PARTY CONSULTANT TO
26 CONSENT TO INTERVENTION BY AN INSURER IN ANY JUDICIAL OR ADMINISTRATIVE
27 ACTION IN WHICH THE NAIC OR A THIRD-PARTY CONSULTANT MAY BE REQUIRED
28 TO DISCLOSE CONFIDENTIAL INFORMATION ABOUT THE INSURER SHARED WITH THE
29 NAIC OR A THIRD-PARTY CONSULTANT UNDER THIS TITLE; AND

1 (7) IN THE CASE OF AN AGREEMENT INVOLVING A THIRD-PARTY
2 CONSULTANT, PROVIDE FOR WRITTEN NOTIFICATION TO THE INSURER.

3 (G) (1) THE SHARING OF INFORMATION AND DOCUMENTS BY THE
4 COMMISSIONER UNDER THIS TITLE MAY NOT CONSTITUTE A DELEGATION OF
5 REGULATORY AUTHORITY OR RULEMAKING.

6 (2) THE COMMISSIONER IS SOLELY RESPONSIBLE FOR THE
7 ADMINISTRATION, EXECUTION, AND ENFORCEMENT OF THIS TITLE.

8 (H) A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF
9 CONFIDENTIALITY IN ORSA-RELATED INFORMATION MAY NOT OCCUR AS A RESULT
10 OF DISCLOSURE OF THE ORSA-RELATED INFORMATION OR DOCUMENTS TO THE
11 COMMISSIONER UNDER THIS SECTION OR AS A RESULT OF SHARING AS AUTHORIZED
12 UNDER THIS TITLE.

13 (I) DOCUMENTS, MATERIAL, OR OTHER INFORMATION IN THE POSSESSION
14 OR CONTROL OF THE NAIC OR A THIRD-PARTY CONSULTANT UNDER THIS TITLE:

15 (1) ARE CONFIDENTIAL AND PRIVILEGED;

16 (2) MAY NOT BE SUBJECT TO TITLE 4 OF THE GENERAL PROVISIONS
17 ARTICLE;

18 (3) MAY NOT BE SUBJECT TO SUBPOENA; AND

19 (4) MAY NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN
20 EVIDENCE IN ANY PRIVATE CIVIL ACTION.

21 32-109.

22 (A) (1) AN INSURER THAT, WITHOUT JUST CAUSE, FAILS TO TIMELY FILE
23 AN ORSA SUMMARY REPORT AS REQUIRED BY THIS TITLE IS SUBJECT TO A
24 PENALTY OF \$200 FOR EACH DAY THE VIOLATION CONTINUES, UP TO A MAXIMUM OF
25 \$25,000.

26 (2) THE COMMISSIONER SHALL PROVIDE NOTICE AND AN
27 OPPORTUNITY FOR HEARING BEFORE IMPOSING A PENALTY UNDER THIS SECTION.

1 **(B) THE COMMISSIONER MAY REDUCE THE PENALTY IF THE INSURER**
2 **DEMONSTRATES TO THE COMMISSIONER THAT THE IMPOSITION OF THE PENALTY**
3 **WOULD CONSTITUTE A FINANCIAL HARDSHIP TO THE INSURER.**

4 **(C) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE**
5 **COMMISSIONER TO TAKE ANY OTHER ACTION AUTHORIZED BY THIS ARTICLE.**

6 **32-110.**

7 **THE COMMISSIONER MAY ADOPT REGULATIONS CONSISTENT WITH THIS**
8 **TITLE TO:**

9 **(1) CARRY OUT THIS TITLE;**

10 **(2) PROVIDE FOR THE PERIODIC REVIEW, NOT LESS THAN ONCE EACH**
11 **YEAR, OF ORSA-RELATED INFORMATION FROM INSURERS; AND**

12 **(3) ENFORCE COMPLIANCE WITH THIS TITLE.**

13 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
14 **January 1, 2018.**